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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CRIMINAL DIVISION

Case No. 00-6273-Cr-Huck

UNITED STATES OF AMERICA,

vs.

Ariel Hernandez,

Defendant.

**GOVERNMENT'S RESPONSE TO HERNANDEZ'S REQUEST FOR
IMMEDIATE TRANSFER TO FDC-MIAMI**

The United States of America, by and through the undersigned Assistant United States Attorney, respectfully submits its response in opposition to Defendant Ariel Hernandez' Request for Immediate Transfer to FDC-Miami. The government requests that the court deny defendant's request and in support thereof states the

following:

Memorandum of Law

Defendant Hernandez seeks an immediate transfer to FDC-Miami pursuant to Federal Rule of Criminal Procedure 38(b), alleging that he needs to meet with and speak with appellate counsel. Counsel further states that Hernandez is unable to obtain appropriate medications in the Broward County Jail where he is presently housed. The undersigned is appellate counsel for the United States and on June 20, 2003, filed a responsive brief to Hernandez' initial brief. Hernandez is to file a reply brief in the appeal, due on July 28, 2003.

Rule 38(b) provides for a district court to recommend that a defendant be confined near the place of trial or appeal for a period reasonably necessary to permit the defendant to assist in preparing the appeal. The rule appears to provide for the request to be made contemporaneously with sentencing, rather than months later.¹ The court should note that the defendant is presently incarcerated in South Florida, in the Broward County Jail while he awaits trial on state charges. His appellate counsel's office is located in Fort Lauderdale, closer to the Broward County Jail than to FDC-Miami. Further, the undersigned has spoken to the state prosecutor who

¹ The judgment and conviction order notes that the court "recommends to the Bureau of Prisons: that the defendant serve his sentence in a facility in the South Florida region if space and security conditions allow it."

informed her that a status conference is scheduled for September 2, 2003 and that a transfer could interfere with proceedings in the state case. Counsel has failed to state what attempts, if any, he has made, within the state system to address his concerns, or what assistance Hernandez will render in the preparation of the reply brief for the Eleventh Circuit Court of Appeals. His request should be denied.

WHEREFORE, the United States of America, respectfully submits its response to Defendant Hernandez's request for a transfer.

Respectfully submitted,

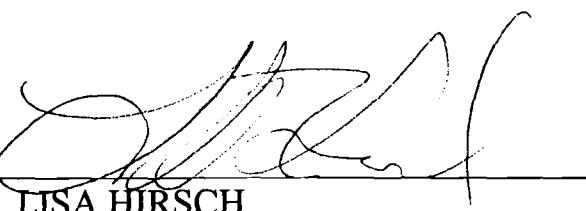
MARCOS D. JIMENEZ
UNITED STATES ATTORNEY

By: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
was sent via U.S. mail this 18th day of July, 2003, to: Richard L. Rosenbaum, Esq.,
350 East Las Olas Boulevard, Suite 1700, Fort Lauderdale, Florida 33301.

By: 
LISA HIRSCH
ASSISTANT UNITED STATES ATTORNEY